

Respondent objects to the jurisdiction of the Administrative Law Judge to decide this matter based upon the fact that no representative of respondent appeared at the preliminary

hearing. Respondent contends this is the result of a lack of notice to the appropriate insurance carrier regarding the alleged claim. However, the E1 Application for Hearing filed by claimant on May 29, 1997, named no insurance carrier, but did name the respondent, Groendyke Transport, Inc., with the appropriate address. The notice provided by the Workers Compensation Division listed both respondent and Continental Casualty Company on the Notice of Hearing. This satisfies the requirements of K.S.A. 1996 Supp. 44-534a, which requires notice to the parties of the hearing. No notice to the insurance company is required. Respondent's failure to attend or send a representative was not due to the lack of notice to respondent. As such, the Appeals Board finds the Administrative Law Judge did not exceed his jurisdiction in proceeding with the hearing.

With regard to whether claimant suffered accidental injury arising out of and in the course of his employment and whether notice was given to respondent, the only evidence in the record is the testimony of claimant. Claimant indicated he provided specific information regarding his ongoing back problems to at least two representatives of respondent, including his supervisor named Mike (last name unknown) and the station manager, Mr. Todd Schram. Claimant testified he discussed his problems with Mr. Schram on several occasions, but was told to keep working.

K.S.A. 1996 Supp. 44-520 requires notice be provided to respondent within ten days of the date of accident. In this instance, claimant has alleged a series of accidents through his last day worked, April 8, 1997. As claimant's uncontradicted testimony is that he advised respondent of his ongoing symptomatology several times in March 1997, the Appeals Board finds that claimant did provide notice to respondent as is required by K.S.A. 1996 Supp. 44-520.

The Appeals Board further finds that claimant's description of the ongoing problems, which accelerated in March 1997 when claimant's workload increased, is sufficient to support a finding that claimant suffered an aggravation of his preexisting condition while employed with respondent. This constitutes an accidental injury arising out of and in the course of his employment with respondent for which benefits may be provided.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Robert H. Foerschler, dated July 10, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1997.

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BOARD MEMBER

c: Steven D. Treaster, Overland Park, KS  
Robyn M. Butler, Overland Park, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director